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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/931,365 | 08/16/2001 | Motofumi Itawaki | 450100-03391 | 3597 |

20999 7590 03/14/2006

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EXAMINER

RYMAN, DANIEL J

ART UNIT PAPER NUMBER

2665

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,365

Applicant(s)

ITAWAKI ET AL.

Examiner

Daniel J. Ryman

Art Unit

2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☒ Claim(s) 1,2,4-6,8,9,11 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

2. Claim 1 is objected to because of the following informalities: in lines 17, 19 and 24, "the information encoding means" should be "the at least one information encoding means".

Appropriate correction is required.

3. Claim 2 is objected to because of the following informalities: in line 3, "the information encoding means" should be "the at least one information encoding means". Appropriate correction is required.

4. Claim 4 is objected to because of the following informalities: in line 3, "the information encoding means" should be "the at least one information encoding means". Appropriate correction is required.

5. Claim 5 is objected to because of the following informalities: in lines 18, 20 and 25, "the information encoding means" should be "the at least one information encoding means".

Appropriate correction is required.

6. Claim 6 is objected to because of the following informalities: in line 3, "the information encoding means" should be "the at least one information encoding means". Appropriate correction is required.

7. Claim 8 is objected to because of the following informalities: in lines 19 and 24, “the information encoding means” should be “the at least one information encoding means”.

Appropriate correction is required.

8. Claim 9 is objected to because of the following informalities: in line 3, “the information encoding means” should be “the at least one information encoding means”. Appropriate correction is required.

9. Claim 11 is objected to because of the following informalities: in lines 16 and 20, “the information encoding means” should be “the at least one information encoding means”.

Appropriate correction is required.

10. Claim 12 is objected to because of the following informalities: in lines 17 and 22, “the information encoding means” should be “the at least one information encoding means”.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

11. Claims 1-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

12. Claims 1, 5, 8, 11, and 12 currently require “data transmission command means” which “determine said information encoding rate” in addition to “means for setting a code rate for the information encoding means.” As pointed out on pages 13-14 of the Remarks filed 15 February 2006, the specification calls for “[t]he data transmission commander 65 . . . [to determine] the bit rate R_d of the encoded information signal Std to be outputted by the information encoder 4.”

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Specification, page 10, lines 14-21. Assuming that “the encoding rate” and “the code rate” are synonymous, the Specification does not disclose, and therefore it does not enable, using two different means, namely a “data transmission command means” and a “means for setting a code rate for the information encoding means” to determine the bit rate R_d of the encoded information signal.

13. Claim 4 currently requires “the statistical multiplex control means” to “output[] said data remaining condition information.” Claim 1, which claim 4 depends upon, requires “means for determining data remaining condition information” which is distinct from the “statistical multiplex control means.” As pointed out on pages 13-14 of the Remarks filed 15 February 2006, the specification calls for “the data transmission commander 65 is set to determine the bit rate R_d . . . on the basis of . . . the data remaining condition F of the FIFO memory 61.” Specification, page 10, line 22 to page 11, line 11. The Specification does not disclose, and therefore it does not enable, using two different means, namely a “statistical multiplex control means” and a “means for determining data remaining condition information” to determine the data remaining condition information.

14. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

15. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 5, 8, 11, and 12 currently require “data transmission command means” which “determine said information encoding rate” in addition to “means for setting a code rate

for the information encoding means.” It is unclear whether “said information encoding rate” is the same as or distinct from “the code rate.”

16. Claims 8-10 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 8 and 12 are directed to “a method”; however, the claims currently contain extensive structural limitations. It is unclear whether Applicant is attempting to claim an apparatus or a method. If Applicant desires a method claim, then Applicant should amend the claims to eliminate the structural elements and claim steps in their place. If Applicant desires an apparatus claim, then Applicant should amend the preamble to read “apparatus” rather than “method”.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Ryman whose telephone number is (571)272-3152. The examiner can normally be reached on Mon.-Fri. 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571)272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJR
Daniel J. Ryman
Examiner
Art Unit 2665


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